

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AIDEN PUGH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEPHANIE MANIGOLD,

Respondent-Appellant,

and

NATHAN MANIGOLD

Respondent.

In the Matter of KYLEE and NOLAN PUGH,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEPHANIE MANIGOLD,

Respondent-Appellant,

and

NATHAN MANIGOLD,

Respondent.

UNPUBLISHED

April 14, 2009

No. 288296

Berrien Circuit Court

Family Division

LC No. 2008-000007-NA

No. 288297

Berrien Circuit Court

Family Division

LC No. 2007-000008-NA

Before: Saad, C.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Respondent Stephanie Manigold appeals as of right the orders terminating her parental rights to the minor child Aiden, pursuant to MCL 712A.19b(3)(g) and (j), and the minor children Kylee and Nolan, pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). We review for clear error a trial court's decision that clear and convincing evidence supports a statutory ground for termination. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

The evidence established that respondent had no contact with anyone in the foster care agency and failed to participate in services from March 3, 2008, through mid-June 2008. She also failed to visit the children after February 29, 2008. Therefore, there was a period of just over 91 days when respondent made no efforts toward reunification and had no contact with the children. However, subsection (3)(a)(ii) requires more than just a finding that respondent deserted the child for 91 or more days. It also requires a finding that respondent failed to seek custody of the child during that 91-day period of desertion. In this case, respondent's attorney continued to represent her, and there was no indication that respondent intended to stop pursuing reunification. As such, the trial court clearly erred in basing termination of respondent's parental rights to Kylee and Nolan on § 19b(3)(a)(ii). However, such error was harmless because the trial court properly based termination of respondent's parental rights to Kylee and Nolan on other statutory grounds. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

With respect to subsections (3)(c)(i), (g), and (j), the evidence clearly and convincingly established that respondent had a past problem with both prescribed medications and illegal substances, and with falling asleep and/or becoming incapacitated by grogginess.¹ The January 25, 2007 petition alleged concerns with respondent's housing, parenting skills, and substance abuse. In January 2008, respondent was unable to complete a psychological assessment because she fell asleep. Then she tested positive for cocaine upon Aiden's birth on February 3, 2008. By the end of the protective proceeding, respondent had stopped providing screens altogether, was not participating in any services, continued to suffer from severe tiredness that made her unable to provide safe supervision of the children,² had not completed any parenting classes or a psychological assessment, and her housing was inappropriate for the children. She did not even

¹ Respondent self-reported to a Children's Protective Services worker that she had issues with Oxycontin, Xanax, and Methadone, and she attempted to address her heroin addiction by participating in Victory Clinic's methadone clinic.

² Respondent's lethargy was noted by the case aide who observed respondent's last two visitations with the children and, as late as four days before the termination hearing, respondent's probation officer wondered whether respondent was abusing substances because of respondent's grogginess.

fully attend the termination hearing. Whether respondent was overdosing on prescribed or illegal substances, it was clearly and convincingly established that she was abusing some substance. Therefore, the trial court did not clearly err when it found that the adjudicating conditions had not been rectified and respondent had failed to provide proper care, there was no reasonable likelihood that the adjudicating conditions would be rectified or respondent would be able to provide proper care within a reasonable time given the young ages of the children, and the children would be at risk of harm if returned to respondent's home. Over the course of this 18-month protective proceeding, respondent had not progressed. Her substance abuse had worsened with the positive result for cocaine at Aiden's birth, and her housing had grown more uncertain.

Finally, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5).³ We review the trial court's decision regarding the children's best interests for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

This protective proceeding was the second time that Kylee had been placed in foster care, which meant that she had been removed from respondent's care for a total of two and a half years (she was almost five and a half years old at the time of the termination hearing). Nolan entered foster care as a one-month-old and had been in foster care for essentially his entire life. The evidence showed that respondent initially interacted well with Kylee and Nolan during visitations, and she shared a strong bond with Kylee. However, respondent had not visited with the children for almost five months by the time of the termination hearing, and Kylee had inquired into the possibility of being adopted by her foster parents and also had, by her own initiative, started calling her foster parents "Mom" and "Dad." There was no evidence of a bonded relationship between respondent and Aiden. Respondent had visited with him only a few times and, during those visitations, had not interacted very much with him. The children needed permanency and stability in their young lives.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra

³ This statutory provision was amended effective July 11, 2008, which was four days before the termination hearing was conducted in this case. In making its best interests determination, the trial court found that not only was termination of respondent's parental rights not contrary to the children's best interests, but that termination was in their best interests. Therefore, the trial court correctly evaluated the children's best interests under the applicable amended version of MCL 712A.19b(5).